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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FOUR

In re DWAYNE F., a Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

DWAYNE F.,

Defendant and Appellant.

A106150

(San Francisco County
Super. Ct. No. JW03-6670)

Appellant Dwayne F., a minor, appeals after the juvenile court sustained the allegations of a petition charging him with second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) and vehicle theft (Veh. Code, § 10851), declared him a ward of the court, and placed him on probation in his parents' home. Dwayne contends the juvenile court's findings are not supported by substantial evidence. We affirm.

I. BACKGROUND

Around 10:00 o'clock on the evening of December 13, 2003, Bernarde Perez went out to his van, which was parked on the street near his house. As he put the key into the door of the van, he felt someone hit him on the left side of his head, and he fell and lost consciousness briefly. When he regained consciousness, his car keys and cell phone were missing. He went back home and told his daughter to call the police. The van was still in its parking spot, and he did not see anyone around. He had not given anyone permission to have his car keys or use his vehicle.

Bernarde told his daughter Ana Perez that his keys and cell phone had been stolen.¹ Ana looked out a window and saw her father's van. She saw two teenaged boys; one had red stripes on his sleeves, and the other had baggy pants. The boy with red stripes was later identified as appellant Dwayne F. They got into the passenger side of Bernarde's van. A third youth, wearing a white shirt, got in the driver's seat. Ana saw the three of them get out of the van. The youth with the white shirt walked in one direction, and the other two walked in the other direction. After Ana called 911, she noticed that the van was no longer there. She went outside and saw the youth with the white shirt driving it past her house. She did not see anyone else in the van.

The police arrived. Officer Clayton Goodwin found two boys, one of whom matched the description Ana had given, crouching behind a car looking in the direction in which the van was pulling out of the parking space. The van moved toward them with its headlights off. When the officer contacted the boys, they fled, but stopped on Goodwin's order. Meanwhile, the van had stopped, and the driver had gotten out and run up the street. A police officer took Ana to see the two boys who had been found behind the car, and she recognized Dwayne by his clothing. The other boy was identified as Matthew V.

Dwayne and Matthew were placed in custody. Dwayne spoke with Officer James Garrity after being advised of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436. He told Officer Garrity that he was in the area with Matthew and an older teenager named John, that John was going to steal cars, and that they walked over to the van. Dwayne first told Officer Garrity that he had not been in the van, and that John had reached in and grabbed the keys from the van as the victim was sleeping in the vehicle. He then changed his story to say that he was at the scene with Matthew and John, and that Matthew and John punched the victim and took his keys and phone. He admitted having been in the

¹ Because Bernarde Perez and Ana Perez share the same last name, we will refer to them by their first names. We mean no disrespect by this designation.

passenger side of the van. Dwayne told Officer Garrity that when John was going to start the car, Dwayne said to John “that would be a stolen car, or something like that.”²

II. DISCUSSION

Dwayne contends there was insufficient evidence to support a finding beyond a reasonable doubt that he aided and abetted in the robbery of the keys and cell phone or the theft of the van.³ Instead, according to Dwayne, the evidence shows merely that he was present at the time of the crimes.

“ ‘The proper test for determining a claim of insufficiency of evidence in a criminal case is whether, on the entire record, a rational trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.] On appeal, we must view the evidence in the light most favorable to the People and must presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]’ ” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) The same principles are applicable to a finding in a juvenile proceeding that the minor violated a criminal statute. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.)

Dwayne is correct that mere presence at the scene of a crime does not support a conclusion that a defendant aided and abetted its commission. “ ‘A person aids and abets the commission of a crime when he or she, (i) with knowledge of the unlawful purpose of the perpetrator, (ii) and with the intent or purpose of committing, facilitating or encouraging commission of the crime, (iii) by act or advice, aids, promotes, encourages or instigates the commission of the crime.’ ” (*People v. Hill* (1998) 17 Cal.4th 800, 851 (*Hill*), quoting *People v. Cooper* (1991) 53 Cal.3d 1158, 1164.) “Neither mere presence at the scene of a crime, nor the failure to take steps to prevent a crime, is alone sufficient to establish that a person is an aider and abettor. Such evidence may, however, be

² This discussion of Dwayne’s statement is taken from Officer Garrity’s testimony. The statement was tape-recorded, but the tape was not admitted into evidence.

³ The parties agree that Dwayne’s conviction is based on the theory that he aided and abetted the commission of the crimes.

considered together with other evidence in determining that a person is an aider and abettor. [Citation.]” (*In re Jose T.* (1991) 230 Cal.App.3d 1455, 1460.) In considering a charge of automobile theft, there must be proof of more than mere presence of the automobile; instead, the defendant must have known the vehicle was unlawfully acquired at a time when he could have in some way aided or assisted in the driving. (*People v. Clark* (1967) 251 Cal.App.2d 868, 874.)

Hill is instructive on what evidence is necessary to support a finding of guilt. There, defendant and two other men came together to a car, then spread out. Defendant and one other man stayed on the driver’s side of the car and attacked the driver, while the third came to the other side of the car and grabbed the purse of the passenger, Carrie Howard. (*Hill, supra*, 17 Cal.4th at pp. 850-851.) The court concluded substantial evidence supported defendant’s conviction of robbing Howard, reasoning that, “although no direct evidence showed defendant acted with the required knowledge and purpose [to aid and abet the robbery of the purse], there was substantial evidence from which a rational trier of fact could have found he in fact possessed such mental state.” (*Id.* at p. 851.) That evidence included the facts that the defendant was observed standing with Howard’s robber and a third man, that the three men approached the car together and spread out, and that while defendant attacked the driver, Howard’s assailant was simultaneously trying to take Howard’s purse. (*Ibid.*) From these facts, the jury could reasonably infer that defendant and Howard’s robber were working together; in particular, their behavior immediately before the crimes of standing together and then approaching the car by surrounding it suggested a preconceived plan of attack. (*Id.* at pp. 851-852.)

The evidence here is sufficient to support the findings that Dwayne aided and abetted the robbery and the theft of the van. Dwayne admitted he knew John planned to steal a vehicle. He approached the van with John and Matthew, stayed with them as they hit Bernarde and took his keys and cell phone, and then got into the van with them. After he and Matthew got out of the van, they crouched together watching as John drove the van toward them with its headlights off. From this evidence, the juvenile court could

reasonably deduce that Dwayne was aware of John's criminal intent, that he intended to participate in the robbery and vehicle theft, and that he and Matthew were waiting for John as he drove the van toward them. His shifting story when questioned by Officer Garrity could reasonably be viewed as showing a consciousness of guilt.

We conclude substantial evidence supports the findings that Dwayne committed robbery and vehicle theft.

III. DISPOSITION

The judgment is affirmed.

RIVERA, J.

We concur:

KAY, P.J.

SEPULVEDA, J.